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**Phillips & Sons Masonry & Construction, Inc. and
Construction and General Laborers Local No.
543, affiliated with The Laborers' International
Union of North America, AFL-CIO.** Case 9-
CA-39029

September 30, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint and compliance specification. Upon a charge and an amended charge filed by Construction and General Laborers Local No. 543, affiliated with the Laborers' International Union of North America, AFL-CIO (the Laborers Union) on January 24 and March 27, 2002, respectively, the Regional Director issued the complaint, compliance specification, and order postponing hearing on April 19, 2002, against Phillips & Sons Masonry & Construction, Inc., the Respondent. The complaint and compliance specification alleges that the Respondent has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On May 17, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On May 24, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint and compliance specification affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Similarly, Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in

support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged as a contractor in the construction industry doing commercial and industrial construction out of its Orma, West Virginia facility.

During the 12-month period preceding issuance of the complaint and compliance specification, the Respondent, in conducting its business operations provided services valued in excess of \$50,000 for Swope Construction, Inc., an enterprise within the State of West Virginia.

Swope Construction, Inc. has been engaged as a general contractor in the construction industry doing commercial and industrial construction out of its Bluefield, West Virginia facility.

During the 12-month period preceding issuance of the complaint and compliance specification, Swope Construction, Inc., in conducting its business operations, purchased and received at its Bluefield, West Virginia facility goods valued in excess of \$50,000 directly from points outside the State of West Virginia.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that the Laborers Union and the International Union of Bricklayers and Allied Craftworkers Local No. 5, AFL-CIO (the Bricklayers Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Roger Phillips has held the positions of the Respondent's president, job superintendent, and principal owner, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, by Roger Phillips at the Respondent's jobsite at New Man School, near Mallory, West Virginia:

(a) On about January 18, 2002, interrogated employees concerning whether the employees had attended a union organization meeting, whether the employees intended to vote for a union in any election that might be conducted,

and the identity of the employee who was the union activist/employer organizer.

(b) On about January 18, 2002, created the impression that employees' union activities were under surveillance.

(c) On about January 18, 2002, threatened employees that if they selected a union to represent them, employees would lose their jobs.

(d) On about January 18, 2002, threatened to discharge any employee if Phillips found out the employee was at the union meeting.

(e) On about January 18 and 21, 2002, threatened employees that if they selected a union to represent them they would end up taking a pay cut.

(f) On about January 22, 2002, interrogated an employee about whether he intended to vote for a union if an election were conducted.

(g) On about January 18, 2002, orally announced to an employee, and since then has maintained the following rule:

No union solicitation or talking about the Union at any time on the jobsite.

Further, on about January 18, 2002, the Respondent discharged its employees Robert Barret and Stephen Montoney, and on about January 23, 2002, the Respondent discharged its employee Mark Richards.

The Respondent discharged employees Barret, Montoney, and Richards because they supported, or assisted the Laborers Union or the Bricklayers Union and engaged in union or concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

The Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by interrogating and threatening employees, creating the impression of surveillance, and announcing and implementing the no solicitation/no talking rule set forth above. In addition, by discharging employees Barret, Montoney, and Richards, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having

found that the Respondent has violated Section 8(a)(1) and (3) by discharging Stephen Montoney and Mark Richards, we shall order the Respondent to make them whole by paying them the amounts set forth in the compliance specification, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹

ORDER

The National Labor Relations Board orders that the Respondent, Phillips & Sons Masonry & Construction, Inc., Orma, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning whether the employees had attended a union organization meeting, whether the employees intended to vote for a union in any election that might be conducted, and the identity of the employee who was the union activist/employee organizer.

(b) Creating the impression that employees' union activities were under surveillance.

(c) Threatening employees that if they selected a union to represent them employees would lose their jobs.

(d) Threatening to discharge any employee if the Respondent found out the employee was at a union meeting.

(e) Threatening employees that if they selected a union to represent them they would end up taking a pay cut.

(f) Announcing and maintaining a rule forbidding union solicitation or talking about the union at any time on the jobsite.

(g) Discharging employees in retaliation for their union or protected concerted activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Stephen Montoney and Mark Richards whole by paying them the amounts set forth below, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:

¹ The General Counsel does not seek a make-whole remedy for discharged employee Robert Barret. Accordingly, he is not included in the backpay amounts set forth in the compliance specification. Neither does the General Counsel seek a reinstatement order for the discharged employees. Accordingly, our Order does not include backpay for Barret or a reinstatement remedy.

Stephen Montoney	\$1,296.12
Mark Richards	527.10
TOTAL:	\$1,823.22

(b) Within 14 days after service by the Region, post at its facility in Orma, West Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 18, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2002

Wilma B. Liebman,	Member
William B. Cowen,	Member
Michael J. Bartlett,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees concerning whether the employees had attended a union organization meeting, whether the employees intended to vote for a union in any election that might be conducted, and the identity of the employee who was the union activist/employee organizer.

WE WILL NOT create the impression that employees' union activities were under surveillance.

WE WILL NOT threaten employees that if they selected a union to represent them employees would lose their jobs.

WE WILL NOT threaten to discharge any employee if we found out the employee was at a union meeting.

WE WILL NOT threaten employees that if they selected a union to represent them they would end up taking a pay cut.

WE WILL NOT announce and maintain a rule forbidding union solicitation or talking about the union at any time on the jobsite.

WE WILL NOT discharge employees in retaliation for their union or protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Stephen Montoney and Mark Richards whole by paying them the amounts set forth below, plus interest and minus required tax withholdings:

Stephen Montoney	\$1,296.12
Mark Richards	527.10
TOTAL:	\$1,823.22

PHILLIPS & SONS MASONRY & CONSTRUCTION,
INC.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."